

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Certified Mail (to Consolidation Coal Company) #7004 2510 0002 9525 6701**

**Certified Mail (to Mr. and Mrs. Roy Brendel) #7004 2510 0002 9525 6718**

In the Matter of:

Consolidation Coal Company	:	Blacksville #2 Mine
Post Office Box 100	:	Permit No: 30841312
State Route 7, U.S. 19	:	Wayne Township
Osage, WV 26543	:	Greene County
	:	Pennsylvania
	:	Claim Nos. 1432 and 1433

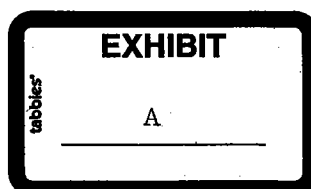
**ORDER**

NOW, this 1st day of February, 2006, the Commonwealth of Pennsylvania, Department of Environmental Protection (hereinafter "Department"), has found and determined the following:

A. Consolidation Coal Company (hereinafter "Consol") is a non-Pennsylvania corporation, which has an address of P. O. Box 100, State Route 7, U.S. 19, Osage, WV 26543. Consol is authorized to mine coal pursuant to Coal Mine Operator's License No. 4213.

B. Consol operates an underground coal mine in Wayne Township and other municipalities in Greene County. The mine is operated pursuant to Coal Mining Activity Permit No. 30841312 and is commonly known as the Blacksville #2 Mine.

C. Roy and Diane Brendel (hereinafter "the Brendels") own property located at 124 Forney Hollow Road and 511 Smith Creek Road, Spraggs, PA 15362 in Wayne Township, Greene County, Pennsylvania. The Brendels' property is located over the Blacksville #2 Mine. Among other things, two dwellings, car barn, log shed, and storage shed exist on the Brendels' property. The two dwellings are commonly known as the Thralls House (primary residence) and the Apple House (rented dwelling).



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D. In July 1999, Consol mined the 1-R panel at the Blacksville #2 Mine, which is located approximately 580 feet north of the Brendels' dwellings, more specifically the Thralls House and the Apple House.

E. On or about August 17, 1999, the Brendels advised Consol that they believed that their property, including the Apple House had been damaged by subsidence caused by Consol's mining activities.

F. In November 2000, Consol mined the 4R panel at the Blacksville #2 Mine and subsided the Brendels' property including their dwellings, car barn, log shed, and storage shed. Brendels' property is located above the 4R longwall panel.

G. In November 2000, the Brendels advised Consol that they believed that their property, including the two dwellings, car barn, log shed, and storage shed had been damaged by subsidence caused by Consol's mining activities.

H. On September 18, 2002, the Brendels filed a claim with the Department pursuant to the Bituminous Mine Subsidence and Land Conservation Act, Act of June 22, 1966, P.L. 31, as amended, 52 P.S. 1406.5c(c) ("Subsidence Act"), and regulations promulgated under it, specifically 25 Pa. Code 89.142a(f).

I. The claim asserted that subsidence caused by Consol's mining had damaged their dwellings, car barn, log shed, and storage shed.

J. The Department investigated the Brendels' claim.

K. The investigation showed that the dwellings, car barn, log shed, and storage shed (collectively "Brendel Structures") had been damaged by mine subsidence caused by Consol's mining activities.

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L. Pursuant to the Subsidence Act and regulations promulgated under it, if mining activities damage dwellings used for human habitation or permanently affixed appurtenant structures, the operator shall repair the damage to the dwelling and permanently affixed appurtenant structures, replace the dwelling and its permanently affixed appurtenant structures OR compensate the owner for the cost of repairing the damage pursuant to Sections 5.4(a), 5.5 of the Subsidence Act, 52 P.S. 1406.5d(a), 1406.5e and 25 Pa. Code § 89.142a(f).

M. Exhibit A ("Scope of Work") sets forth items at the Brendel Structures, which, to the best of the Department's knowledge, must be restored or repaired.

N. The Department has determined that the reasonable cost of repairs to the Brendel Structures is \$926,840.80.

O. The owners of damaged structures may be reimbursed for incidental costs as approved by the Department pursuant to 25 Pa. Code § 89.142a(f)(2)(ii).

P. Brendels have incurred reasonable incidental costs in the amount of \$51,482.22 for expert consultant fees.

Q. Consol has not reimbursed the Brendels for their incidental costs.

NOW, THEREFORE, pursuant to Sections 5.5(c) and Section 9 of the Mine Subsidence Act, 52 P.S. 1406.5e(c), 1406.9; Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17 ("Administrative Code"), and 25 Pa. Code 89.142a(f) it is ordered that:

1. Consol shall repair the Brendel Structures in accordance with the Secretary of the Interior's Standards for Rehabilitation (codified at 36 CFR Part 67). At a minimum, Consol shall repair the Brendel Structures by addressing all of the items in the Scope of Work attached as Exhibit A, and any other items, which are subsequently discovered by the Department, Consol or its contractors, in conformance with the Secretary of the Interior's Standards for Rehabilitation.

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2.
  - a. Consol shall employ a "Project Manager" for the repair of the Brendel Structures. The Project Manager shall be an individual or entity that is competent, knowledgeable about the Secretary of the Interior's Standards for Rehabilitation, and has significant experience carrying out restoration of structures in accordance with the Secretary of the Interior's Standards for Rehabilitation.
  - b. The Project Manager shall be an individual or entity authorized to engage in the practice of architecture in Pennsylvania in accordance with the Architects Licensure Law, Act of December 14, 1982, P.L. 1227, as amended, 63 P.S. §§ 34.1 – 34.33.
  - c. Consol shall consult with the Brendels on the selection of the Project Manager, and attempt in good faith to reach agreement with the Brendels on the selection of the Project Manager. Such efforts shall include, but are not limited to, soliciting the Brendels' recommendations on a Project Manager, considering any qualified candidates, and taking Brendels' objections to other candidates into consideration.
  - d. Within sixty (60) days of the date of this order Consol shall identify the Project Manager to the Department (California District Mining Office) along with documentation establishing that the Project Manager is competent, knowledgeable about the Secretary of the Interior's Standards for Rehabilitation, and has significant experience carrying out restoration of structures in accordance with the Secretary of the Interior's Standards for Rehabilitation. In addition, Consol shall provide evidence that it has entered into a contract with the Project Manager. At the same time Consol shall state whether or not the Brendels concur with the selected Project Manager, and if not set forth the Brendels' reasons for not concurring, if known. In addition, if the Brendels do not concur with the Project Manager, Consol shall describe its good faith

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efforts to consult with the Brendels and to reach consensus on the selection of a Project Manager, in accordance with Paragraph 2.c, above.

- e. The Project Manager will be responsible for:
- i. Developing all working construction drawings and detailed scopes of work necessary for Consol's subcontractors, including the Project Manager, to complete the items identified on the Department's scope of work (Exhibit A, Scope of Work), and any other items which are subsequently discovered by the Department, Consol or its contractors, and in conformance with the Secretary of the Interior's Standards for Rehabilitation;
  - ii. Oversight and management of the entire project, including coordination of work and property access between Consol's subcontractors and the Brendels;
  - iii. Preparing and sending progress reports to the Department, Consol, and the Brendels on the first day of each month once the restoration work has begun and continuing until all of the restoration work has been completed. The Department's copy of the monthly report shall be submitted to:

Department of Environmental Protection  
California District Office  
25 Technology Drive  
California Technology Park  
California, PA 15423

**Attn: Compliance Manager**

Among other things, the progress reports shall describe the repairs that have been made in order to adequately address the Scope of Work (Exhibit A) and in conformance with the Secretary of the Interior's Standards for Rehabilitation.

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- iv. Preparation and submission of a final report which summarizes all repairs made by the various subcontractors, and which indicates that the work has been adequately completed to the satisfaction of the Project Manager, in accordance with the Scope of Work (Exhibit A) and in conformance with the Secretary of the Interior's Standards for Rehabilitation.
- f. Within ninety (90) days of the date of this order, the Project Manager shall submit to the Department a repair schedule for all of the work detailed in the Scope of Work (Exhibit A). The repair schedule shall be submitted to:

Department of Environmental Protection  
California District Office  
25 Technology Drive  
California Technology Park  
California, PA 15423

**Attn: Compliance Manager**

- 3. Consol shall maintain the Thralls House in habitable condition at all times until repairs are complete, or provide for adequate alternative housing until restoration is completed.
- 4. During the planning and repair of the Brendel Structures, Consol and its contractors shall make all reasonable efforts to minimize the inconvenience to the Brendels and to minimize the amount of disturbance to the Brendels' quiet enjoyment of their home.
- 5. Within sixty (60) days of the date of this Order, Consol shall reimburse the Brendels for their incidental costs in the amount of \$51,482.22.

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Consol shall provide evidence to the Department that the payment required by Paragraph 5 has been made in a timely manner by submitting to the Department a copy of the check and an affidavit from a responsible corporate official. This documentation should be sent to the following address:

Department of Environmental Protection  
California District Office  
25 Technology Drive  
California Technology Park  
California, PA 15423

**Attn: Compliance Manager**

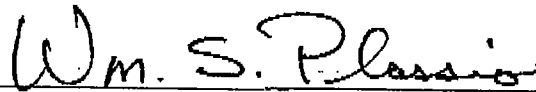
Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. § 7514, and the Administrative Agency Law, 2 Pa. C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Market Street State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within thirty (30) days of receipt of written notice of this action unless the appropriate statute provides a different time period. The appeal of a mine operator shall not be considered to be perfected unless within sixty (60) days of the date of receipt of written notice of this action the operator has deposited an amount equal to the cost of repair (\$926,840.80) and incidental costs (\$51,482.22) as determined by the Department in an interest-bearing escrow account administered for such purposes by the Department. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

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IF YOU WANT TO CHALLENGE THIS ACTION, YOUR APPEAL MUST REACH THE BOARD WITHIN THIRTY (30) DAYS. YOU DO NOT NEED A LAWYER TO FILE AN APPEAL WITH THE BOARD.

IMPORTANT LEGAL RIGHTS ARE AT STAKE, HOWEVER, SO YOU SHOULD SHOW THIS DOCUMENT TO A LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, YOU MAY QUALIFY FOR FREE PRO BONO REPRESENTATION. CALL THE SECRETARY TO THE BOARD (717-787-3483) FOR MORE INFORMATION.

FOR THE COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

A handwritten signature in cursive script, reading "Wm. S. Plassio", is written over a horizontal line.

William S. Plassio  
District Mining Manager  
District Mining Operations



## **EXHIBIT A - Scope of Work**

### **Explanation:**

The scope of work consists of the **BRENDEL DAMAGE ESTIMATE** report (attached) and the revised **GLANCE ASSOCIATES, INC. (GLANCE)** Construction Cost Estimate. To interpret the scope of work for the Department's Order, refer to **Attachment 1** (Brendel Cost Estimate) and **Attachment 2** (Review Notes). In general, where the GLANCE "Estimated Cost" has been crossed out and a "0" has been entered, that line item is not to be included in the scope of work. Refer to the appropriate note in **Attachment 2** (Review Notes) for an explanation. Where the GLANCE "Estimated Cost" has been crossed out and a different cost has been substituted, that line item is included in the scope of work. Again, refer to **Attachment 2** (Review Notes) for an explanation.